The learned magistrate should have concerned himself whether there was sufficient cause and not whether the explanation was satisfactory or unsatisfactory. He did not go a step further to decide whether in view of the unsatisfactory explanation he considered that appellants had not shown sufficient cause. I cannot assume that this was what the learned magistrate had in mind when he said: "I have considered the explanation given by both bailors very carefully and I have come to conclusion that their explanation was not satisfactory" in the absence of such a finding. In *Valliamai* v. *Public Prosecutor*,[2] the learned judge held that:—

"The relevant provisions relating to forfeiture of a bond are in section 404 of the Criminal Procedure Code (Cap. 6) which provides for 'any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.' This makes it clear that, upon sufficient cause shown, forfeiture may be waived altogether, whilst sub-section (v) further states in specific terms that the court has a discretion to 'remit any portion of the penalty mentioned and enforce payment in part only.' Careful consideration, therefore, ought to be given by magistrates to the question in two stages; first, has sufficient cause been shown against forfeiture; secondly, if not, are the circumstances such that the whole sum of the penalty ought to be enforced."

The bail bond was signed on the 28th day of August, 1967, two days after the accused was first brought to court and thereafter the accused appeared four times in court, that is on 17th October, 1967, 8th December, 1967, 23rd March, 1968 and 29th March, 1968, and he failed to attend court on 17th January, 1968. It also appeared that after attending the magistrate's court on two or three occasions the case was fixed for hearing in the sessions court. It was in this court that the accused failed to attend. The first appellant explained that he took steps to ensure the attendance of the accused on the date or dates on which the accused was required to be present in court, including the day or date on which he was absent. In my view, there was in this case sufficient cause shown against forfeiture, considering the fact that the accused appeared on several occasions in court and that sufficient steps were taken to ensure the accused's attendance.

As regards the procedure I think the case of *Khor Ewe Suan & Anor.* v. *Public Prosecutor*,[3] can be applied here. In that case a statement in *Mallal's* Criminal Procedure, 4th edition, p. 577 was quoted with approval and the learned judge (Hepworth J.) held that:—

"In this case the court had not drawn up proceedings against the principal and the sureties under the section. It seems to me that evidence should have been led producing the actual bail bond and stating that the bailors were the persons who had entered into the bond. They should then have been given an opportunity to cross-examine the witness who produced the bail bond and to show cause why their recognizance should not be forfeited. They should have been invited to go into the witness box and state their case, if they so wished, calling any further evidence which they required. This had not been done."

Although in this case the appellants did go into the witness box and show cause on oath no evidence on oath was taken by the magistrate as to the forfeiture of the bond and no evidence was led to produce the actual bail bond and to state that the bailors were the persons who had entered into the bond.

In that case the learned judge quashed the order of the magistrate and remitted it to the magistrate for taking further evidence. In this particular case, however, since I am of the opinion that sufficient cause had been shown I do not propose to do that. Accordingly I quash the order of the magistrate forfeiting the bond and order that the sum as stated be refunded.

Order accordingly.

Solicitors: *Ranjit, Thomas & Kula.*

KRISHNAN v. ABDUL RAZAK & ANOR.

[O.C.J. (Winslow J.) October 30, 1968]
[Singapore — Motion in Suit No. 343 of 1967]

Practice and Procedure — Partners — Action against partner individually — Failure to file his defence — Final judgment against him — R.S.C., 1934, O. XVI r. 4.

Where an action is brought against partners individually and not in the name of the firm, the failure of any partner to file a defence entitles the plaintiff to sign final judgment against him.

Case referred to:—

(1) *Jackson* v. *Litchfield & Sons* (1882), 8 Q.B.D. 474.

MOTION.

N. C. Goho for the applicant/1st defendant.

L. A. J. Smith (*V. K. S. Narayanan* with him) for the respondent/plaintiff.

Winslow J.: The main question for determination on this motion by the first defendant to set aside the judgment entered against him in this action on 31st May, 1968 for failing to file his defence to the writ of summons herein is whether he and Mohamed Hidayathullah were being sued as partners individually, though trading as M.M.H. Sahib, or whether they were being sued in the firm name.

The writ of summons herein describes the defendants as "M.S. Abdul Razak and Mohamed Hidayathullah (trading as M.M.H. Sahib)".

Had the plaintiff sued them in the name of the firm under O. XLVI r. 1, any judgment obtainable by him could only have been a judgment against the firm by its firm name and the present applicant's motion would have been unanswerable on the authority of *Jackson* v. *John Litchfield & Sons* [1] That, however, is not the

case here. Forms 1 and 2 in *Atkin's* Court Forms (2nd Edition) Volume 30 at page 91 make this distinction extremely clear. The writ of summons herein follows Form 1 which is a writ against partners sued individually. Form 2, however, which is in respect of a writ where partners are being sued in the firm name sets out the firm name and not the names of the individual partners. It is clear from this that the two defendants were being sued individually and not as a firm and in my judgment, therefore, O. XVI r. 4 applies and not O. XLVI r. 1. In the circumstances, failure to file a defence on the part of the first defendant clearly entitled the plaintiff to sign final judgment against him.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Goho & Co.; L. A. J. Smith.*

B. ATMARAM & SONS v. ESSA INDUSTRIES LTD.

[O.C.J. (Chua J.) November 4, 1968]
[Singapore — Suit No. 2041 of 1968]

Practice and Procedure — Service of writ of summons for service within jurisdiction naming foreign corporation as defendant effected by serving writ in Singapore on chairman of foreign corporation present in Singapore temporarily — Whether "any manager or agent, having at the time of service personally the control or management of such business or work for such person within Singapore" — Application to set aside writ and service — R.S.C. 1934, O. IX r. 8.

A generally endorsed writ can be served on the chairman of a foreign company while on a temporary visit to Singapore although the company had neither an office nor an agent in Singapore and although the chairman had no control of the management of the company business in Singapore.

Cases cited in argument:—

(1) *Newby* v. *Colt's Patent Firearms Co.* (1871), L.R. 7 Q.B. 293, 296.

(2) *Colt Industries* v. *Sarlie* [1966] 1 All E.R. 673.

CIVIL SUIT.

K. A. O'Connor for the plaintiffs.

C. S. Wu for the defendants.

The plaintiffs a Singapore firm, issued a generally endorsed writ claiming damages for breach of contract against the defendants, a company incorporated in Pakistan. The writ was served on the chairman of the defendant company, at his hotel, while he was on a temporary visit to Singapore. The defendants entered conditional appearance and applied to set aside the service on the ground that the person on whom the writ was served was not the defendants' agent and had no authority to accept service on the defendants' behalf. The application was supported by an affidavit of the chairman stating that he was in Singapore on a temporary visit, that the defendants had neither an office nor an agent in Singapore, that the entire business was conducted by their office in Karachi, that the chairman had neither control nor management of the defendants' business in Singapore, which was within the sole province of the defendants' board of directors and that he held no power of attorney on behalf of the defendants. The plaintiffs filed affidavit evidence to the effect that the chairman made regular visits to Singapore at approximately two monthly intervals, and that during these visits he had carried out certain business on behalf of the defendant company without appearing to require the authority of his board of directors before doing so, and that on at least one occasion the probability was that he had not in fact acquired the authority of his board of directors for a particular transaction which he carried out in Singapore on behalf of the company.

Chua J. after hearing argument in Chambers, held that the service of the writ was valid and dismissed the defendants' application with costs.

Application dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*